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Honorable Morris Farr  
Arizona State Senate  
Phoenix, Arizona 85007

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ARIZONA ATTORNEY GENERAL  
March 9, 1978  
Re: 78-40 (R77-395)

Dear Senator Farr:

You ask in your December 8, 1977 inquiry whether the Board of Directors of the Arizona School for the Deaf and Blind has the authority to administratively provide for the granting of tenure to its teachers.<sup>1</sup> We conclude that the equivalent of a tenure system is already mandated by statute.

A.R.S. § 15-816 specifies the powers and duties statutorily reposed in the Superintendent of the Arizona School for the Deaf and Blind. That section requires the Superintendent to recommend appointments of all employees to the Board of Directors for final action and further provides that the firing of employees shall occur as follows:

"B. The superintendent may discharge for cause any person employed in the school. In the event of a discharge for cause the superintendent shall file with the board a written report of his actions and his reasons therefor."

The requirement that an employee may be discharged "for cause" provides the exclusive<sup>2</sup> means of discharge. Consequently this "for cause" discharge requirement taken together with basic constitutional guarantees of due process, envisions the equivalent<sup>3</sup> of a tenure system such as that

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1. A.R.S. § 41-771(4) exempts officers and employees of the School from the State personnel system.

2. The Superintendent is specifically given the power to discharge employees; this necessarily excludes the Board of Directors from exercising such power and further prevents the Superintendent from discharging employees without cause. See Phoenix Title & Trust Company v. Burns, 96 Ariz. 332, 335, 395 P.2d 532, 534 (1964) and the cases cited therein.

3. The principal attribute of any tenure system is that no tenured employee may be discharged or denied a future contract without good cause shown at a prior hearing, with exceptions such as reductions in force and mandatory retirement age. See, e.g., Johnson v. Board of Education, 101 Ariz. 268, 272 419 P.2d 52, 56 (1976).

provided for elementary and high school teachers pursuant to A.R.S. § 15-251, et seq., though necessarily these statutory provisions do not apply to the Arizona School for the Deaf and Blind. Cf. Stautz v. Pence, 21 Ariz. App. 153, 154, 517 P.2d 111, 112 (1973); Kaufman v. Pima Junior College Governing Board, 14 Ariz. App. 475, 484 P.2d 244 (1971) and Att'y. Gen. Op. No. 62-4-L. Concerning the due process requirement, the Arizona Court of Appeals stated:

"Due process requires that the teacher be given notice of the charges against him, notice of the evidence upon which the charges will be based, a hearing before a tribunal of apparent impartiality (in this case the district board), and a chance to present witnesses and confront adverse evidence at the hearing. [cite]. \* \* \* Due process demands that the boards . . . amplify their decisions with findings of fact and legal conclusions. [cite]." McClanahan v. Cochise College, 25 Ariz. App. 13, 18, 540 P.2d 744 (1975), on reh'g., 25 Ariz. App. 233, 542 P.2d 426 (1975).

We, therefore, conclude that the mandate of A.R.S. § 15-816(B), that employees at the Arizona School for the Deaf and Blind be discharged only "for cause", coupled with the due process requirements of the Arizona and United States Constitutions, effectively require a tenure system at the Arizona School for the Deaf and Blind. To provide guidance in the implementation of such a system, the Superintendent of the Arizona School for the Deaf and Blind should establish policy guidelines to be followed in discharging teachers for cause.<sup>4</sup>

Sincerely,

JOHN A. LASOTA, JR.  
Acting Attorney General



J. DAVID RICH  
Assistant Attorney General

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4. Perhaps the clearest and most expeditious guidelines are those established by A.R.S. § 15-251, et seq., and which presumably could be adopted except that under A.R.S. § 15-816(B) there can be no probationary teachers. Cf. Kaufman v. Pima Junior College Governing Board, supra.